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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Gibraltar

Working paper prepared by the Secretariat

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I. General[1]

1. Gibraltar is a narrow peninsula extending southward from the south-west coast of Spain, to which it is connected by an isthmus about 1.6 kilometres long. The Spanish port of Algeciras lies 8 kilometres across the bay to the west; the continent of Africa is situated 32 kilometres across the Strait of Gibraltar to the south. According to the United Kingdom of Great Britain and Northern Ireland, the area of Gibraltar is 5.86 square kilometres, and according to Spain it is 4.8 square kilometres.

2. The latest census of Gibraltar, taken on 14 October 1991, assessed the Territory's civilian population at 26,703. This was made up of 20,022 Gibraltarians, 3,811 other British subjects, including families of British servicemen stationed in Gibraltar, but excluding servicemen, and 2,870 aliens. In 1998, the population was estimated at 29,045.

II. Political developments

A. General

3. The 1969 Constitution guarantees basic civil and political rights and attributes. It assigns responsibility for local matters to a local Government. The United Kingdom, however, retains power over matters of defence, external affairs and internal security. The Governor, appointed by the sovereign of the United Kingdom, retains the power to rescind laws passed by the legislature. Furthermore, the Constitution reserves for the sovereign full power to make laws from time to time for the peace, order and good government of Gibraltar (including, without prejudice to the generality of the foregoing, laws amending or revoking that Constitution). The current Governor, Sir Richard Luce, was appointed in February 1997. A detailed discussion about the 1969 Constitution, including the positions of Spain and the United Kingdom is contained in the report of the Special Committee to the General Assembly at its twenty-fourth session.[2]

4. Legislative authority is vested in a single House of Assembly consisting of 15 elected members. Executive authority is vested in a Council, which is composed of the Governor, four ex officio members, the Chief Minister and four elected members, and which acts in an advisory capacity to the Governor. The Council of Ministers is made up of the Chief Minister, members of the House of Assembly designated by the Chief Minister and some elected members. The Council of Ministers, which acts as a cabinet, holds responsibility for specific domestic matters, with the Governor retaining the prerogative to intervene in support of his responsibilities for defence and external affairs.

5. The legal system of Gibraltar is based on the common law and statute law of England. Gibraltar retains its own court system, which includes lower courts (Court of First Instance, Coroner's Court, Magistrate's Court), a court of appeals, and a supreme court. The supreme court has unlimited jurisdiction to hear and determine any civil or criminal proceedings. At present, it consists of the Chief Justice and an additional judge appointed by the Governor.

6. In January 1999, the Parliamentary Under-Secretary of State, Foreign and Commonwealth Office, reaffirmed that the relationship between the United Kingdom and Gibraltar continues to be governed by the 1969 Constitution.

B. General elections

7. The last general elections in Gibraltar were held on 16 May 1996 and, according to the administering Power, 88 per cent of the registered voters participated. The results were as follows: the Gibraltar Social Democratic Party, 52.2 per cent; the Gibraltar Socialist Labour Party, 43 per cent; and the Gibraltar National Party, 4.7 per cent. Consequently, the Gibraltar Social Democratic Party won eight seats in the Territorial Legislative Assembly and the Gibraltar Socialist Labour Party obtained seven seats. Mr. Peter Caruana, leader of the Gibraltar Social Democratic Party, obtained 8,561 votes and was appointed Chief Minister of Gibraltar.

8. On 4 February 1999, a by-election was held to fill a vacated seat in the House of Assembly. The winner was Dr. Joseph Garcia, who represented a Gibraltar Socialist Labour Party/Gibraltar Liberal Party alliance and who gained 52 per cent of the votes cast. According to press reports, nearly 9,000 votes were cast, representing 48 per cent of the electorate.[3]

C. Recent developments

9. In March 1999, the United Kingdom Secretary of State for Foreign and Commonwealth Affairs issued a White Paper entitled "Partnership for Progress and Prosperity: Britain and the Overseas Territories" (see A/AC.109/1999/1, annex) that proposed changes in the relationship between the United Kingdom and its overseas Territories. According to the document, the relationship between the metropolitan government and its territories must be seen "within the

overall framework of modernization and reform, and within Britain's new international role".

10. One of the Government's recommendations concerned the creation of an Overseas Territories Department within the Foreign and Commonwealth Office to ensure better links between the United Kingdom and its Territories. However, the paper indicated that because Gibraltar was within the European Union as part of the United Kingdom membership under the Treaty of Rome — the only Overseas Territory with that status — it would continue to be handled principally by the Foreign and Commonwealth Office's European Departments, reporting to the Minister responsible for Europe.

11. The Government of the United Kingdom launched a Strategic Defence Review in May 1997 to examine most areas of the United Kingdom's defence. The resultant White Paper placed renewed emphasis on the rapid deployment of British forces in response to crisis. According to the administering Power, Gibraltar and its facilities provide an independent forward operating base for British forces in the Mediterranean and serve as a transit base for vessels en route to the Middle East and elsewhere. Service manpower at Gibraltar has been reduced to the minimum necessary (440 service personnel) to manage the remaining defence facilities in the Territory. As a consequence of British defence cuts in Gibraltar, the defence input into the local economy has fallen to about 10 per cent of gross domestic product, or around £60 million. This is scheduled to fall to £40 million by the year 2000.

III. Economic conditions

A. General

12. Gibraltar has no known natural resources and lacks agricultural land. The industries, trades, and services in the Territory mainly supply the needs of its population and the large number of visitors to the Territory. The economy of Gibraltar is largely dependent on tourism and the provision of financial services such as banking, insurance, shipping, and portfolio management.

13. Per capita income was estimated as US$ 17,500 in 1997. Inflation in 1998 was estimated at 2 per cent.

B. Public finance

14. The report of the administering Power indicates that departmental revenue credited to the Consolidated Fund for the year ending on 31 March 1997 totalled £76.4 million, whereas departmental expenditure amounted to £60.1 million, compared with £71.9 million and £53.1 million, respectively, in 1994/95. The main sources of Consolidated Fund revenues were income tax, which totalled £45.3 million, and general rates, which totalled £9.2 million.

15. On 31 March 1997, the public debt of Gibraltar stood at £61.4 million, compared with £64.9 million on 31 March 1996. Expenditures are broken down as follows: education and sport, £12,300,000; electricity, £4,900,000; police, £6,900,000; port services, £4,300,000; environment and housing, £8,500,000; fire service, £2,100,000; customs, £2,200,000; Consolidated Fund charges, £18,100,000.

16. Income tax is charged on income arising in, derived from, or received in Gibraltar. Dividends, interest, pension and emoluments of office accruing in, derived from, or received in any place outside Gibraltar by an individual ordinarily resident in Gibraltar are also taxable. The rates applicable to individual residents in Gibraltar range from 20 per cent on the first £1,500 of taxable income to 50 per cent after the first £19,500.

C. Trade

17. In 1997, total imports were £300,210,000, including £26,397,000 in foodstuffs and £22,825,000 in manufactured goods. Total re-exports were £49,528,000, including £30,330,000 in machinery and transport equipment. Principal re-exports include petroleum products, manufactured goods, wines, spirits, malt whisky, and tobacco. Nearly two thirds of Gibraltar's non-fuel imports (£190,507,000) originate from the United Kingdom. Other sources of imports include Japan, the Netherlands and Spain. Exports of goods of local origin are negligible. Exports consist mainly of re-exports of petroleum and petroleum products supplied to ships.

18. Imports control did not change during the period under review. Other than a few items of essential foodstuffs, gold, jewellery, petrol, caravans, and endangered species, all goods can be imported under the Open General Licence.

D. Banking and finance

19. There were 26 banks operating in Gibraltar in 1998. The banking sector serves offshore and local customers and has balance sheet footings of over £6 billion. The Government of Gibraltar is in the process of transposing into domestic law the 4th and 7th European Union directives, which require offshore companies to publish their accounts.[4] According to the administering Power, Gibraltar is required to implement all European Community directives related to financial regulation. Gibraltar has made a commitment not only to implement the necessary measures to the minimum standard required within the European Union, but also to match United Kingdom standards of financial regulation. Gibraltar's standards of financial regulation are assessed formally and rigorously by the United Kingdom Government on a regular basis.[5] In that regard, during the period under review, the Government of Spain on several occasions expressed concern that European Union directives had not been fully implemented in Gibraltar and disputed information by the administering Power to the contrary. In February 1999, the United Kingdom submitted information to the European Union regarding the number of measures that had been implemented in Gibraltar (39), those that were inapplicable (31) and those that were in the "final stages of transposition" (8).

20. According to press reports, there has been a steady increase in the number of new companies formed in Gibraltar: 3,187 new companies were formed in 1996, 3,470 in 1997, and 3,878 in 1998.[6] There are now approximately 23,000 active companies registered under the Companies (Taxation and Concession) Ordinance. Under the Ordinance companies are exempted from the payment of income tax upon payment of a fixed annual fee, irrespective of profits made and whether these profits are received in the Territory. The exemption covers dividends, interest, directors' fees, and annual payments made to non-residents. Unless otherwise authorized, the company must not carry on trade or business in Gibraltar or in the United Kingdom and no Gibraltarian or resident of Gibraltar may have any beneficial interest in the company's shares.

E. Transportation, communications and utilities

21. Road transportation in and out of Gibraltar along the isthmus linking the Territory to Spain was disrupted in early 1999. In February 1999, Spain increased controls at its border post with Gibraltar. According to press reports, the Foreign Ministry of Spain announced that it would maintain the border controls until Gibraltar applied European Union directives to impede tax evasion, drug trafficking and money-laundering (see para. 47 below). The controls caused up to six-hour delays for vehicle traffic at the border. According to press reports, the United Kingdom submitted a complaint on the matter to the European Commission. A spokesman for the European Commission stated that there were no limits in the European Union's legislation regarding external border controls.

22. The total length of roads in the Territory is 26.75 miles (about 43.04 km). The roads are reported to be in good condition and suitable for vehicular traffic. Five bus routes serviced by 17 buses maintain communication in the Territory. The total number of registered vehicles on 30 December 1996 was 27,722.

23. Air mail is dispatched to London, and via London, to all destinations worldwide, six times a week by direct flights. Surface mail to and from the United Kingdom is received and dispatched five times a week. In 1997 eight commemorative sets of stamps were issued in the Territory.

24. As the Strait of Gibraltar is a principal water route between the Mediterranean Sea and the rest of the world, Gibraltar is used as a port by many long-distance liners and cargo ships. It has dry-dock facilities and a commercial ship repair yard. Tax concessions are available to shipowners who register their ships at Gibraltar. At the end of 1996, there were 23 vessels with a combined weight of 305,593 gross register tonnage registered in Gibraltar, of which 21 were merchant vessels. In 1997, 4,445 vessels entered the port of Gibraltar, representing a combined gross register tonnage of 84,000,000.

25. A study on the major upgrading of the Port of Gibraltar was released by the Ministry of Tourism in April 1998. A major recommendation is the creation of a self-financing Gibraltar Port Authority, which would act independently of the Government. A private sector plan for developing a container trans-shipment facility, and to expand and modernize existing facilities, is also under consideration.[7]

26. The telephone system is operated by Gibraltar NYNEX Communication, Ltd., a joint United States/Gibraltar company. NYNEX merged with Bell Atlantic on 15 August 1997. In 1997, the total number of telephones was 23,832, compared with 21,466 in 1996.

27. The Electricity Department is responsible for the supply of electricity for civilian use in the Territory. The Ministry of Defence operates a separate undertaking to meet defence requirements. During 1997, the maximum electricity

demand was 24,100 kilowatts and a total of 111.2 million kilowatt-hours were generated. Gibraltar is dependent on imported petroleum for its energy supplies.

F. Tourism

28. In 1996, tourist arrivals totalled 6 million, compared to 5.5 million in 1995. Hotel arrivals in 1996 were 46,000, generating a revenue of about £140 million. The Ministry of Tourism and Transport has introduced a policy to increase the amount of cruise ships that visit the Territory. It has set a target of 300 cruise ship arrivals for 1999, which is double the 1996 figure. There are an estimated 2,000 hotel beds in Gibraltar.

IV. Social and educational conditions

A. Labour

29. According to the administering Power, unemployment on the island is 3.8 per cent. The average number of unemployed in the first quarter of 1999 was 383, down from 580 in the same period in 1998.

30. In 1996, average weekly earnings in the Territory were £231.88, compared with £233.32 in 1995. According to press reports, 14.4 per cent of the workforce is employed in administration and national defence, and 12.4 per cent in the financial services sector. In 1998, employment in the financial services sector grew by 9.5 per cent.

31. Legislation regulating labour and employment conditions in the Territory is reported to be in line with European Union directives. The Trade Unions and Trade Disputes Ordinance of Gibraltar contains provisions similar to those in the United Kingdom for the registration and organization of trade unions. As of December 1995, there were 20 trade unions registered in the Territory.

B. Human rights and the status of women

32. The Gibraltar (Constitution) Order of 1969 guarantees the protection of the fundamental rights and freedoms of the individual and the maintenance of a Supreme Court with unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and with such jurisdiction and powers as are conferred upon it by the Constitution of Gibraltar or any other law.

33. The Territory has had several major international human rights instruments extended to it by the administering Power. They include the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

34. The status of women in Gibraltar, whether married or single, with or without family responsibilities, is similar to that enjoyed by women in the United Kingdom. The Social Security (Insurance Ordinance) of Gibraltar provides for the payment of a variety of benefits and allowances to expectant mothers and widows.

35. In a judgement delivered on 18 February 1999, the European Court of Human Rights determined by a vote of 17 to 2 that, with regard to Gibraltar, the United Kingdom had violated article 3 of Protocol 1 of the European Convention on Human Rights, concerning the right to participate in European parliamentary elections. The proceedings were initiated by a citizen of Gibraltar who, upon applying to register as a voter in the European parliamentary elections in 1994, was told that, under the terms of the European Community Act on Direct Elections of 1976, Gibraltar was not included in the franchise. The Court ruled that article 3 of Protocol 1 applied to Gibraltar and that the United Kingdom was responsible for securing the rights guaranteed by it.[8] The next elections for the European Parliament are in June 1999.

36. In response to a question posed in the House of Lords on 25 February 1999 about the ruling, the Parliamentary Under-Secretary of State, Foreign and Commonwealth Office, Baroness Symons, said:

> "We will be taking all available steps to secure extension of the European Parliament franchise to Gibraltar, in the light of the decision of the European Court of Human Rights. However we can only do so by amending the 1976 European Community Act on Direct Elections. This will require the agreement of all member States. [The Government] will seek such an amendment in the current negotiations in Brussels on establishing Common Principles for European parliamentary elections. We will not be introducing emergency legislation because the United Kingdom does not have the power unilaterally to extend the European Parliament franchise to Gibraltar through its domestic legislation."

C. Environment

37. In 1996, the Environmental Health Department, which was a territorial Government Department, ceased to exist. The functions formerly carried out by the Department have been transferred to a fully privatized Environmental Agency. The chief Environmental Health Officer is responsible for the overall running of the Environmental Agency and is answerable to the Minister for the Environment and Health.

38. The aforementioned White Paper on British Overseas Territories (see para. 9 above) specifically referred to Gibraltar as a key migration route for birds of prey and as one of the Territories which had ratified the Convention on Biological Diversity. The report also indicated that the common objective of the United Kingdom Government, the territorial Governments, and other groups was to use the environment of the Overseas Territories to provide benefits to the people in them, and to conserve their global heritage by managing sustainably their natural resources.[9]

D. Housing

39. According to reports of the administering Power, the Government of Gibraltar has pursued a policy of increased home ownership both to alleviate the housing shortage and to reduce the burden of increasing repair and maintenance costs for its rented accommodations. Since 1985, the level of home ownership in Gibraltar increased from 6 to 25 per cent by 1994 and to 30 per cent in 1997. At the end of 1997, the government housing waiting list contained 500 applicants, compared with 568 at the end of 1994.

E. Social welfare and assistance

40. The Social Security (Non-Contributory Benefits and Unemployment Insurance) Ordinance covers entitlement and payment of unemployment benefits to unemployed persons previously in employment. Payment of such benefits is financed from the weekly contributions by employers and employees to the Social Insurance (short-term benefit) Fund. The standard weekly rate of unemployment benefits is £37.20, with an increase of £18.20 per week for any additional dependent adult. During 1995, 609 claims for unemployment benefits were processed and 609 requests were granted.

F. Public health

41. The Gibraltar Health Authority is responsible for providing health care in the Territory. The Authority operates a group practice medical contributory scheme and gives registered persons access to free medical treatment.

42. St. Bernard's Hospital, with a total of 103 beds, provides comprehensive out-patient services and in-patient treatment for acute medical and surgical cases. It also has a maternity section and two wards for elderly patients. The King George V Psychiatric Unit has 60 beds and provides diverse types of psychiatric treatment, including in-patient and out-patient services. The territorial Health Centre provides general practice medical services, including house visits.

43. According to press reports, Gibraltar has 90 registered medical practitioners in the Territory. These include 56 doctors, 14 dental practitioners and 20 pharmacists. A Medical Registration Board was established as a result of the Medical and Health Ordinance of 1997. The Board monitors the annual registration of medical specialists that desire to practice in Gibraltar. A programme of visits by consultants from the United Kingdom covers specialties such as paediatric neurology, cardio-thoracic surgery, and plastic surgery.

44. During 1995/96, total public health expenditures amounted to £20.67 million, compared to £19.9 million in 1994/95.

G. Public education

45. The Education Department continues to be in charge of public education in Gibraltar. In 1995/96, a total of £11 million was spent on education, compared with £10.9 million in 1994/95.

46. In 1997 there were 13 primary schools (of which one was private) enrolling 3,192 students, and two secondary schools enrolling 1,826 students. The total teaching staff at both of these schools was 309. There is also a technical and vocational college with 226 full-time students. In addition, 628 university students receive State scholarships to attend universities outside the Territory.

H. Crime and crime prevention

47. The White Paper (see paras. 9 and 38 above), under the heading "Encouraging good government — combating

drug trafficking and drugs-related trade", noted legislation enacted by the local Government in Gibraltar in 1995 and 1996 that banned Gibraltar-based fast boats. According to information supplied by the administering Power, the activities of Gibraltar-based fast boats and rigid inflatables had been effectively eliminated and illicit trafficking involving Gibraltar had ceased to be a problem. During the period under review, the Government of Spain continued to express concern at what it considers to be the use of Gibraltar for laundering proceeds from drug trafficking or other illicit activities. The administering Power has pointed out that Gibraltar has introduced money-laundering legislation to United Kingdom and European Commission standards.

48. The administering Power reported 1,002 minor offences (such as those related to liquor, disorderly conduct, and firearms violations) and 858 arrests for minor offences in 1996, down from 1,659 offences and 1,555 arrests in 1995. Also reported for 1996 were 3,702 serious crimes (such as violence against the person, sexual offences, and robbery) and 2,104 arrests for serious crimes, down from 4,630 reported serious crimes in 1995 and 2,948 arrests.

V. Consideration by the United Nations

A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

49. The Special Committee considered the question of Gibraltar at its 1487th meeting, on 29 June 1998. The Special Committee heard Mr. Peter Caruana, Chief Minister of Gibraltar who stated that Gibraltarians were seeking decolonization through modernization of their constitutional relationship with the United Kingdom in a manner which would result in a non-colonial situation that retained political and constitutional links with that country (see A/AC.109/SR.1487). The Special Committee acceded to the request of the delegation of Spain to participate in the Committee's consideration of the question of Gibraltar. At the same meeting, the representative of Spain made a statement in which he recalled General Assembly resolutions 2353 (XXII), 2429 (XXIII), 1514 (XV) and 2625 (XXV) in relation to the principle of territorial integrity in the decolonization of Gibraltar and reiterated the position of his Government on the question of Gibraltar (see also paras. 55–56 below).

50. At its 1487th meeting, on 29 June 1998, the Special Committee decided to continue its consideration of the question at its next session, subject to any directives that the General Assembly might give in that connection at its fifty-third session and, in order to facilitate consideration of the question by the Fourth Committee, to transmit the relevant documentation to the Assembly.

B. Special Political and Decolonization Committee (Fourth Committee)

51. At its 7th meeting, on 13 October 1998, the Committee had before it a draft decision entitled "Question of Gibraltar" (A/C.4/53/L.2), submitted by the Chairman.

52. At the same meeting, the Committee adopted draft decision A/C.4/53/L.2 without a vote.

C. Action by the General Assembly

53. At its 78th plenary meeting, on 3 December 1998, the General Assembly, on the recommendation of the Special Political and Decolonization Committee (Fourth Committee), adopted decision 53/420 without objection, as representing the consensus of the members of the Assembly. The decision read as follows:

> "The General Assembly, recalling its decision 52/419 of 10 December 1997 and recalling at the same time that the statement agreed to by the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland at Brussels on 27 November 1984 stipulates, *inter alia*, the following:
>
> > 'The establishment of a negotiating process aimed at overcoming all the differences between them over Gibraltar and at promoting cooperation on a mutually beneficial basis on economic, cultural, touristic, aviation, military and environmental matters. Both sides accept that the issues of sovereignty will be discussed in that process. The British Government will fully maintain its commitment to honour the wishes of the people of Gibraltar as set out in the preamble of the 1969 Constitution',
>
> "Takes note of the fact that, as part of this process, the Ministers for Foreign Affairs of Spain and of the United Kingdom of Great Britain and Northern Ireland hold annual meetings alternately in each capital, the most recent of which was held in London

on 10 December 1997, and urges both Governments to continue their negotiations with the object of reaching a definitive solution to the problem of Gibraltar in the light of relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations."

VI. Future status of the Territory

A. Position of the administering Power

54. At the 12th plenary meeting of the fifty-third session of the General Assembly, Ambassador Stuart Eldon of the United Kingdom, in exercise of his right of reply, said:

"British sovereignty over Gibraltar was clearly established in the Treaty of Utrecht. This legal fact is incontrovertible. Moreover, the British Government stands by the commitment to the people of Gibraltar, as contained in the preamble to the 1969 Constitution of Gibraltar, which states that the United Kingdom will not enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another State against their freely and democratically expressed wishes. Spain's offer to reintegrate Gibraltar into Spain, to which Mr. Matutes referred in his speech today, can only prosper with the freely and democratically expressed support of the people of Gibraltar.

"The British Government believes that issues relating to Gibraltar can only be resolved by direct talks, such as those established under the 1984 Brussels Declaration. In that regard, we attach importance to continuing the dialogue with Spain as a means to overcoming our differences."

B. Position of the territorial Government

55. At the 4th meeting of the Fourth Committee, on 7 October 1998, Mr. Caruana, Chief Minister of Gibraltar, said, *inter alia*:

"Mr. Chairman, as the leaders of Gibraltar's Government, the Deputy Chief Minister and I come once again to address you for three reasons. First to re-assert our right to self-determination, which we have demonstrated to you is firmly based on the political and legal rights applicable to all Non-Self-Governing Territories on the United Nations list as established by United Nations resolutions and Covenants and international law as determined by the International Court of Justice. ... Second, we come to rebut the arguments of Spain in its attempt to obtain sovereignty of Gibraltar against the democratic wishes of our people; and third to seek from the United Nations a clear acknowledgement and declaration of the applicability of the principle of self-determination as the only principle relevant to the decolonization of Gibraltar.

"Spain argues that because she has a 300-year-old claim to the Territory, Gibraltar can only be decolonized by applying the principle of territorial integrity and that we do not have the right to self-determination. This is a misconceived position based on the distortion of the principle that self-determination cannot be used to disintegrate a Member State. Gibraltar is not, and has not been part of Spain for 294 years. The principle of territorial integrity therefore has no relevance. Further, the International Court of Justice has rejected the concept of territorial retrocession in the process of decolonization. It is not possible under the doctrine of the Charter of the United Nations to decolonize a colony by any principle other than self-determination; that is the doctrine of the United Nations.

"... How long does it take to acquire the rights given to colonial people by the Charter of the United Nations? Other ex-colonial peoples have exercised the right to self-determination after a much shorter presence in their territories, for example the United States of America, Australia, Canada, New Zealand and all the Caribbean countries. ... Why should the colony of Gibraltar be any different? We are no less indigenous than the peoples who exercised the right to self-determination in those and many other countries.

"... Every year this Committee recommends to the General Assembly (which adopts as a consensus resolution) a resolution calling on the administering Power, the United Kingdom, and Spain to take part in a bilateral process of dialogue aimed at overcoming all the differences between them over Gibraltar with the object of reaching a definitive solution to the problem of Gibraltar. Such a recommendation does not address the fact that the issue is not the resolution of supposed bilateral differences between the administering Power and the third party territorial claimant but the rights of the people of Gibraltar to decide their own future in the exercise of the right to

self-determination, which cannot be advanced in a bilateral dialogue between the United Kingdom and Spain. Only respect for Gibraltar's right to self-determination can bring about the decolonization of Gibraltar in accordance with the spirit of the Charter of the United Nations ...

"... To this end I informed this Committee, last year, that the Gibraltar Government was formulating proposals to the United Kingdom for further constitutional change. This process has moved forward over the last year and we are now in discussions with [Her Majesty's Government] on achieving a modernization of our constitutional links with the United Kingdom. We aim to achieve a relationship that maintains close political ties with the United Kingdom, but which produces the greatest possible degree of self-government. These new arrangements would give rise to a non-colonial relationship, and thus their acceptance by the people of Gibraltar in a referendum would be a valid and legitimate exercise of self-determination in accordance with the relevant General Assembly resolutions. It would, in our view, end the colonial status of Gibraltar and constitute the tailor-made fourth option to decolonization provided for in General Assembly resolution 2625 (XXV) of 24 October 1970.

"... The new constitutional arrangements we seek from the United Kingdom would not, of course, settle the dispute with Spain. We therefore want, on a parallel but unconnected basis, to pursue a process of dialogue with Spain, to improve relations and to establish a better communication with our neighbour on the large variety of issues that affect us both".

C. Position of the Government of Spain

56. At the 12th plenary meeting of the fifty-third session of the General Assembly, Mr. Abel Matutes, Foreign Minister of Spain, said:

"Every year the General Assembly renews its appeals to Spain and the United Kingdom to continue their negotiations with a view to putting an end to the colonial situation of Gibraltar. The current negotiation process stems from the so-called Brussels Declaration of 1984, in which the Governments of our two States undertook to establish a negotiation process, to include sovereignty issues, in order to settle all their differences. During the 1997 negotiating round I submitted a proposal that would allow Spain to regain sovereignty over Gibraltar, while maintaining for the inhabitants of the Territory all their current benefits, granting them, in the framework of the Spanish State, a greater degree of political autonomy than they enjoy today, and agreeing, as an additional guarantee of Spain's good faith, to share sovereignty with the United Kingdom for a long transition period.

"I believe that that proposal should be able to form the basis of an agreement that would, once and for all, put an end to an anachronistic situation originating from the dynastic wars of the early eighteenth century".

57. At the 6th meeting of the Special Political and Decolonization Committee (Fourth Committee), on 12 October 1998, the representative of Spain spoke on the question of Gibraltar and said, *inter alia*:

"Let me first say that Spain's position on the question of Gibraltar has not changed.

"I am addressing this Committee today in order to comment on the statement made in this room last Wednesday, 7 October, by the petitioner from Gibraltar, Mr. Caruana.

"First of all, the principle of self-determination of peoples is not the only principle applicable to decolonization processes. There is also the principle of territorial integrity.

"The circumstances of each colonial situation have been, and continue to be, different, and there is no one way of putting an end to such situations.

"It is true that, in most cases, decolonization has been achieved through the colonized peoples' exercise of the right of self-determination. This principle would also apply to most of the 17 Territories still under colonial rule.

"However, the situation is different in the case of colonies established in the territory and at the expense of other States which already existed as States at the time of colonization. In such cases, decolonization has been achieved in the only way possible — by restoring the territorial integrity of the States concerned. The question of Gibraltar falls into the latter category.

"That the principle of territorial integrity is fully applicable to the decolonization of Gibraltar is not an argument made by Spain alone; it is the clear, established and unequivocal doctrine of the United Nations, which, year after year, urges the United Kingdom and Spain to continue their negotiations with a view to ending this colonial situation.

"Secondly, Gibraltar is, geographically and politically, an integral part of Spain, with which it shared a common destiny until it was forcibly occupied by the United Kingdom. It was turned into a military base by the colonial Power, which first expelled the Spaniards living there and then occupied the isthmus illegally throughout the nineteenth century.

"Gibraltar is a United Kingdom colony, but its present inhabitants are not a colonized people. They are not an indigenous population, for they are not descended from the people who were colonized. They are descended from the colonizers and from people brought there by the colonizers. As Mr. Caruana himself acknowledges, the population on Gibraltar has been British for the past 294 years. It would therefore be unacceptable, and doubtless contradictory, to apply a principle — that of self-determination — which was designed to put an end to colonialism in order to achieve the exact opposite: the perpetuation of colonialism.

"Third, Gibraltar can remain a United Kingdom colony or it can revert to Spain; no other option is possible.

"The colonial situation of Gibraltar affects two sovereignties: that of the United Kingdom, as the colonial Power, and that of Spain, since the colony is established in Spanish territory.

"The Treaty of Utrecht, which established British sovereignty over Gibraltar, gave Spain a preferential right to sovereignty over Gibraltar in the event that it ceased to be British.

"Fourth, the proposal for the decolonization of Gibraltar, made last December by the Spanish Minister, Mr. Matutes, during the Anglo-Spanish negotiation process, was explained in detail last June by the Spanish representative to the Special Committee on Decolonization".

D. Anglo-Spanish negotiations

58. No meetings occurred within the negotiating process established by the Brussels joint communiqué of 27 November 1984 during the period under review. It will be recalled that, according to the communiqué, the Ministers for Foreign Affairs of Spain and of the United Kingdom agreed to hold annual meetings alternately in each capital with the objective of reaching a definitive solution to the problem of Gibraltar. The last meeting indicated as being held within the Brussels framework was on 10 December 1997.

59. It will be recalled that, during the last meeting held under the Brussels process, on 10 December 1997, the Spanish Minister for Foreign Affairs made a formal offer to the United Kingdom Government regarding a future status for Gibraltar, whereby the Territory would come under Spanish sovereignty, yet retain a large degree of local political and administrative autonomy (see A/AC.109/2112, para. 72). The Government of the United Kingdom has not formally responded to the proposal.

E. Anglo-Gibraltarian discussions

60. During the period under review, there were regular meetings and discussions between the United Kingdom and Gibraltarian ministers and officials. Among those discussions were talks held during the last quarter of 1998 between British and Gibraltarian officials on the modernization of Gibraltar's Constitution. Regarding those talks, Mr. Caruana stated the following during an address to the Royal Institute of International Affairs in October 1998:

> "We are in discussions with Her Majesty's Government on achieving a modernization of our constitutional links with the United Kingdom. We aim to achieve a relationship that maintains close political ties with the United Kingdom, and our British sovereignty, but which produces the greatest possible degree of self-government."

Notes

[1] Information contained in the present working paper has been derived from information transmitted to the Secretary-General by the Government of the United Kingdom of Great Britain and Northern Ireland under Article 73 *e* of the Charter of the United Nations, on 17 May 1999, as well as from the official documents of the Government of Spain.

[2] *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 23* (A/7623/Rev.1), vol. III, chap. XI, annex, paras. 7–23.

[3] *Gibraltar Chronicle*, 5 February 1999.

[4] Ibid., 28 January 1999.

[5] "Partnership for Progress and Prosperity: Britain and the Overseas Territories", United Kingdom Secretary of State for Foreign and Commonwealth Affairs.

[6] *Gibraltar Chronicle*, 4 February 1999.

[7] *El País Semanal*, 12 July 1998.

[8] *Gibraltar Chronicle*, 19 February 1999.

[9] Ibid., 20 March 1999.